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## How to Transform European Fisheries Policy

### INTRODUCTION AND SUMMARY OF KEY RECOMMENDATIONS

The public debate on the third reform of the Common Fisheries Policy (CFP) began on April 22<sup>nd</sup> 2009 with the publication of the European Commission's Green Paper. With over 80 percent of assessed fish stocks in Community waters deemed over-fished and the fishing industry stumbling from one crisis to another, the current CFP is widely perceived as being a failure. The situation is dire. Unless this reform addresses the main structural failings of the CFP, fish stocks will be further depleted, exacerbating the crises facing the fisheries sector, with potentially disastrous consequences for fishery-dependent coastal communities.

EU fisheries are characterised by fleets that are able to catch more fish than are available, catch limits that are frequently set too high for reasons of political expediency, opaque decision-making procedures and a culture of non-compliance with the rules of the CFP.

The 2002 CFP reform brought some improvements in the areas of long-term management, participation, control and allocation of subsidies. However, it did not prioritise achieving environmental sustainability – a prerequisite for the socially and economically sustainable exploitation of marine resources.

The Commission stated in the Green Paper in April 2009 that it “believes that a whole-scale and fundamental reform of the Common Fisheries Policy (CFP) and remobilisation of the fisheries sector can bring about the dramatic change that is needed to reverse the current situation. This must not be yet another piecemeal, incremental reform but a sea change cutting to the core reasons behind the vicious circle in which Europe's fisheries have been trapped in recent decades.”<sup>1</sup>

This paper responds to this challenge, proposing a fundamentally new, principle-centred approach to fisheries management in Community waters and for the EU fleet globally. It outlines the key issues that OCEAN2012 – an alliance of organisations dedicated to transforming European Fisheries Policy to stop over-fishing, end destructive fishing practices and deliver fair and equitable use of healthy fish stocks – would like to see incorporated into a new CFP:

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<sup>1</sup>COM(2009)163 final

- Environmental objectives should be enshrined in the CFP as a prerequisite to fulfilling social and economic objectives; the precautionary approach and the ecosystem-based approach to fisheries management must form the fundamental basis upon which EU fisheries management is built.
- The CFP should define a decision-making framework ensuring that decisions are taken at the appropriate levels, differentiating between long-term strategic and operational management decisions.
- The CFP should define instruments and competencies which deliver sustainable fishing power<sup>2</sup> at EU and regional level; this should include legally-binding and time-bound fishing power limits per fishery, or group of fisheries, in a given area in the case of multi-species fisheries.
- Access rules should be based on a set of criteria that ensure a transition to, and support for, environmentally and socially sustainable fishing.
- The decision-making processes should be transparent and participatory.

### **PURPOSE AND PRINCIPLES OF A REFORMED CFP**

The primary purpose of the reformed CFP emerging in 2012 must be to secure environmentally and socially sustainable fisheries in Community waters and wherever else EU fleets are active. In order to reach this, environmental objectives must be enshrined in the new Basic Regulation and be given priority over all other objectives as a prerequisite to achieving social and economic sustainability.

The precautionary approach and the ecosystem-based approach, mentioned in the current CFP, must underpin any future policy. In particular, they must be defined in an operational manner and be applied routinely in fisheries management.

#### *The Precautionary Approach*

States, sub-regional and regional fisheries management organisations are called upon by the FAO Code of Conduct for Responsible Fisheries (1995) to apply a precautionary approach to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment, taking account of the best scientific evidence available.

The precautionary approach is referenced in a number of international agreements, including the Convention on Biological Diversity and the 1995 UN Fish Stocks Agreement, both of which were ratified by the EU, and should therefore be applied in all relevant policy areas. The UN Fish Stocks Agreement states that the absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures. It also includes a concise description of how the precautionary approach should be applied to fisheries management (Article 6 and Annex II).

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<sup>2</sup>In this context, fishing power is a measure of the properties of a fishing vessel, measured in terms of the *fishing mortality* the vessel causes in the fish stock(-s); it must not be confused with engine power. Documents of the European Commission and others frequently refer to the notion of *fishing capacity*.

### **UN Fish Stocks Agreement 1995 Application of Precautionary Approach (Article 6)**

3. In implementing the precautionary approach, States shall:

- a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;
- b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;
- c) take into account, *inter alia*, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and
- d) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.

4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3 (b) to restore the stocks.

5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, *inter alia*, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the

### *The Ecosystem-based Approach*

Because the effects of fishing go far beyond commercially exploited species, its impact on all components of the marine ecosystem – target and non-target species, associated or dependent species, as well as the marine habitat – needs to be considered. Applying an ecosystem-based approach also means that the impact of other human activities, including habitat destruction, climate change and pollution, needs to be considered when taking management decisions. Current scientific knowledge is not sufficient to predict the consequences of our activities in marine ecosystems; therefore an adaptive approach to fisheries management is needed. The ecosystem-based approach is described in the Marine Strategy Framework Directive of June 2008<sup>3</sup>.

<sup>3</sup>Directive 2008/56/EC of the European Parliament and of the Council.

**Ecosystem-based Approach – Marine Strategy Framework Directive (MSFD), Art. 1.3**

Marine strategies shall apply an ecosystem-based approach to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of good environmental status and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations.

Under the current CFP, no real attempt to implement an ecosystem-based approach has been made. This needs to change, as the future of fisheries and meeting other EU objectives rely on its successful application. The Marine Strategy Framework Directive provides a starting point in committing Member States to achieving Good Environmental Status (see box below) by 2020. The Directive specifically mentions the need for coherence with the CFP (and other EU policies). In order for the Member States to implement the Marine Strategy Framework Directive, its requirements need to be integrated into all relevant policy areas. The future CFP must therefore be formulated and applied in a way that delivers the fisheries-related aspects of Good Environmental Status, thus contributing to its achievement by 2020.

**Good Environmental Status – Marine Strategy Framework Directive (MSFD), Art. 3:**

‘Good environmental status’ means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations.

*ANNEX I*

**Qualitative descriptors for determining good environmental status (Art. 3(5), 9(1), 9(3) and 24)**

- 1) Biological diversity is maintained. The quality and occurrence of habitats and the distribution and abundance of species are in line with prevailing physiographic, geographic and climatic conditions.
- 2) Non-indigenous species introduced by human activities are at levels that do not adversely alter the ecosystems.
- 3) Populations of all commercially exploited fish and shellfish are within safe biological limits, exhibiting a population age and size distribution that is indicative of a healthy stock.
- 4) All elements of the marine food webs, to the extent that they are known, occur at normal abundance and diversity and levels capable of ensuring the long-term abundance of the species and the retention of their full reproductive capacity.
- 5) Human-induced eutrophication is minimised, especially adverse effects thereof, such as losses in biodiversity, ecosystem degradation, harmful algae blooms and oxygen deficiency in bottom waters.
- 6) Sea-floor integrity is at a level that ensures that the structure and functions of the ecosystems are safeguarded and benthic ecosystems, in particular, are not adversely affected.

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- 7) Permanent alteration of hydrographical conditions does not adversely affect marine ecosystems.
- 8) Concentrations of contaminants are at levels not giving rise to pollution effects.
- 9) Contaminants in fish and other seafood for human consumption do not exceed levels established by Community legislation or other relevant standards.
- 10) Properties and quantities of marine litter do not cause harm to the coastal and marine environment.
- 11) Introduction of energy, including underwater noise, is at levels that do not adversely affect the marine environment.

### **WHO SHOULD BE ALLOWED TO FISH WHAT, WHERE, AND HOW? DECISION-MAKING IN A REFORMED CFP**

The failure of the CFP to achieve its stated objectives can, in large part, be attributed to the way in which decisions are made. Today, even very detailed management measures are decided at the highest political level: the Council of Ministers. As a political body, the Council is moved by short-term, often national, economic interest, rather than a shared vision of how to ensure long-term sustainable fisheries. The Lisbon Treaty will not change this. The flaws in decision-making are further aggravated by a lack of meaningful participation and consultation of the stakeholders most affected.

In order to achieve long-term sustainable fisheries, OCEAN2012 proposes that the process of decision-making be fundamentally changed. We suggest that the Council of Ministers and the European Parliament focus on the over-arching vision and objectives of the CFP and leave the detailed implementation to more appropriate bodies such as the Commission, Member States, or new decentralised management bodies.

OCEAN2012 proposes that there are different hierarchical steps in decision-making:

- Setting overall, long-term policy objectives (at which level of abundance should fish stocks be maintained?);
- Determining the available fish resources (how much fish can be caught?);
- Determining the amount and type of fishing power (how should fishing take place?); and
- Allocating access to the resource (who should be allowed to fish and where?).

Below we have set out how we believe these decisions should be reached.

#### ***Step 1: Setting of Long-term Policy Objectives***

The current CFP has multiple and conflicting objectives:

- To protect and conserve living aquatic resources;
- To provide for their sustainable exploitation;
- To minimise the impact of fishing activities on marine ecosystems;
- To progressively implement an ecosystem-based approach to fisheries management;
- To contribute to efficient fishing activities within an economically viable and competitive fisheries and aquaculture industry;
- To provide a fair standard of living for those who depend on fishing activities; and
- To take into account the interests of consumers.

These objectives cannot all be met simultaneously, yet the CFP gives no indication of how they should be prioritised.

As stated above, a key issue for OCEAN2012 is to have environmental objectives given priority. This means that fishing mortality limits must be established within the biological limits of the marine ecosystems, with the aim of keeping stocks of both target and non-target species at levels capable of ensuring their long-term abundance and retention of their full reproductive capacity. It would minimise the risk of stock depletion or collapse, ensure that the fish stocks are maintained as a functioning part of the ecosystem and reduce management costs.

The EU has set Maximum Sustainable Yield (MSY) as a management target for fisheries. In theory this corresponds to the largest average catch that can be made year after year without reducing the abundance of the stock. The common assumption is that this occurs when the fish stock has been reduced to less than half of the un-fished level. The Johannesburg Declaration of 2002 called for fish stocks to be allowed to increase to the level at which they could produce MSY by 2015.

Fishing beyond MSY will not yield economic gains in the long-term. Fishing at a lower level will result in almost the same catch with much less effort and is therefore economically more viable in the medium to long-term. Furthermore, MSY is a maximum value beyond which productivity is assumed to decline. It is calculated using estimates rather than sound data, meaning it can easily lead to the over-exploitation of fish stocks.

Therefore, as stated in the UN Fish Stocks Agreement, MSY should only be considered an intermediate target to achieving abundance. Alternative objectives of fisheries management must be developed that are more conservative and precautionary in nature.

OCEAN2012 recommends that such long-term policy objectives be set by the highest decision-making bodies: the Council of Ministers and the European Parliament. These two bodies should:

- Jointly decide on long-term management objectives such as level of abundance of fish stocks, speed of recovery and other relevant aspects relating to the marine environment, in line with the 2008 Marine Strategy Framework Directive, the 1992 Habitats Directive and international agreements such as the Convention on Biodiversity, and agree a set of environmental and social criteria to allocate access to resources; and
- Give a clear mandate (limited in time and regularly reviewed) to the European Commission, Member States, and relevant decentralised management bodies to ensure delivery of these objectives based on the steps outlined below.

### ***Step 2: Determination of Available Fish Resources***

Currently, scientific advice is not followed: fishing limits agreed by the Council have exceeded scientific advice by approximately 48 percent in recent years, resulting in severe reduction of fish stocks. To remedy this, short-term political interests need to be uncoupled from the determination of fishing limits. Once policy objectives have been set, scientists can determine the amount of fisheries resources available to be caught sustainably in any one timeframe, within a sufficiently robust framework.

OCEAN2012 recommends that future scientific assessment of fish stocks and the determination of fishing opportunities are based on a more conservative and precautionary policy framework:

- The precautionary approach as defined by the UN Fish Stocks Agreement from 1995 and the ecosystem-based approach as defined in the Marine Strategy Framework Directive should be the foundation for scientific advice, and should be revised as knowledge improves. The relevant scientific bodies should deliver advice on available resources, responding to *what and how much can be safely caught where?*
- The scientific process should take into account traditional knowledge of the resources and their habitat.
- The fishing mortality limits must be set to include all fish that are caught, not simply those that are landed. In other words, discards must count as catch and be included in the scientific assessments. That should also apply to recreational fisheries where sizable catches from overfished/recovering stocks such as cod, salmon and bluefin tuna are taken.
- The advice should be legally-binding to the relevant management bodies.

### ***Step 3: Determination of Amount and Type of Fishing Power***

It has repeatedly been documented that the fishing capacity<sup>4</sup> of EU fleets far exceeds the available resources despite four EU programmes lasting 20 years intended to correct that imbalance. In 2002, these capacity reduction programmes were terminated and replaced by a “reference threshold” for each Member State, but this has not led to a balance between capacity and resources.

Limits on catches or fishing effort cannot, by themselves, guarantee sustainability or the achievement of MSY. They could, however, play a role in a system based on a third option – limiting of *fishing power*. In this context, fishing power is a measure of the properties of a fishing vessel, measured in terms of the *fishing mortality* the vessel causes on the fish stock or stocks; it must not be confused with engine power. The fishing power of the fleet should be managed so as to result in the rate of fishing mortality that will ensure sustainability. Such an approach requires good data on the activities of the fleets. Limiting either the exercise of fishing effort by a fleet, or the catches, could be used as secondary measures once the power of the fleets is appropriately regulated.

Fishing power must be evaluated on a fishery-by-fishery basis relative to the resources available. It is essential that fishing power matches fishing opportunity and effort, in order to ensure economically viable fisheries, and to prevent illegal, unregulated and unreported (IUU) fishing and extreme inefficiency. The European Commission recently improved assessment of fleet overcapacity by issuing capacity reporting guidelines with a variety of

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<sup>4</sup>This has been defined by FAO as: “*The amount of fish (or fishing effort) that can be produced within a period of time (e.g. a year or a fishing season) by a vessel or a fleet if fully utilised and for a given resource condition.*” To use such an important term alternatively as a quantity of fish (output) or an amount of fishing effort (input) introduces counter-productive ambiguity into discussions of management. We shall avoid it, preferring to use well-defined terms in the scientific literature of fisheries management. But if “capacity” is to be used at all it should probably be as a quasi-synonym for “power”.

indicators. Yet assessing real fishing power in relation to available fishing opportunities remains a challenge.

OCEAN2012 recommends that for each fishery, fishing power limits are established independently of national interest, and that instruments and competencies which deliver sustainable fishing power – at an EU and regional level – are established. This should include legally-binding and time-bound fishing power limits per fishery or group of fisheries in a given area, in order to balance fleet power with available resources as quickly as possible. The required fleet reductions must not lead to the creation of excess power in other fisheries in Community waters or elsewhere.

Some aspects of fisheries management, such as the type of fishing power to be allowed in a given fishery (type of vessels, fishing gears and methods based on the criteria mentioned above), should be implemented in a decentralised manner, with appropriate stakeholder input (e.g. government, fishing sectors, trade unions, NGOs). Such decisions must be based on common principles and objectives. Strict control and enforcement would be a prerequisite and it would require oversight by a central authority.

Once fishing power limits have been set for each fishery or, in the case of multi-species fisheries, for each group of fisheries in a given area, a sustainable fleet should be determined as follows:

- Based on the criteria outlined below (Step 4), the appropriate body should decide through a participatory process involving the relevant consultative bodies, on how much of what kind of fishing power can be allowed for each fishery in order to exploit the estimated available resources.
- These decisions should be legally-binding and implemented progressively according to a strict timetable.

The abundance of fish stocks and the fishing power of the fleet must be re-estimated regularly in order to adjust the fishing power to balance it with available resources. Most fisheries are conducted by more than one Member State, so the fishing power must be evaluated by fishery, rather than within individual Member States.

#### ***Step 4: Allocation of Access to Resources***

Since the conception of the CFP, access to fish resources has been highly politicised. The situation has been aggravated by fishing power far exceeding available fish resources. Add to that a division of Total Allowable Catches (TACs) into national quotas of fish that can be caught based on historical catches, disregarding environmental or social performance.

In principle-centred decision-making, the current quota allocation regime (relative stability) should be replaced by a system that contributes to environmental sustainability, a more equitable distribution of access to the available fish resources and a culture of compliance. The right to fish should be granted to those who contribute to the overarching objectives of the CFP.

OCEAN2012 recommends that decisions about access to fish resources and adequate fishing power are based on a set of transparent criteria which favour less destructive fishing gear and practices, low fuel consumption, greater employment, good working conditions and



high quality products. Use of these criteria is intended to create positive competition amongst fishers; those who fish in the most environmentally and socially sustainable way would be permitted to fish the most. In the longer term, such an approach would transform EU fisheries.

Decisions on allocation of access to fisheries could be significantly decentralised. This could be done on an ecosystem/regional/local basis depending on the fishery and fish stocks concerned.

Local fishing communities in a given area should have primary access. Fishing interests from outside the area can apply for access if they can demonstrate that their fishing activities conform to local interest. Such a decentralised management process will require good governance, transparency and accountability.

Access would be granted based on a set of criteria agreed at EU level, which should include:

- **Selectivity** – Different fishing methods result in different amounts of by-catch which are (currently) often discarded. Fishers using fishing methods with low by-catch should be given priority access to the available resources;
- **Environmental impact** – The impact of different gears and practices on the environment vary widely, for example damage to the sea bed and pollution. Fishers using less destructive fishing methods should be given priority access;
- **Energy consumption** – Some gear and vessel types require enormous amounts of energy compared to the fish they catch, most notably some types of trawlers and seiners. Fishers using vessels and fishing methods consuming less energy per tonne of fish caught should be given priority access;
- **Employment and working conditions** – Fishing methods that provide more employment, as long as they are also less damaging for the environment, should be given priority access. Working conditions should comply with relevant international standards, notably the 2007 International Labour Organisation (ILO) Work in Fishing Convention;
- **Quality of product** – The gear type used affects the quality of the fish caught. Fishers using gear types providing the best quality of fish for human consumption should be given priority access; and
- **History of compliance** – Past compliance with the rules of the CFP by fishers as well as Member States should be considered when allocating access to fishing rights.

Use of these criteria would help to create more sustainable EU fisheries to the benefit of both the marine environment and the communities that depend on them. If formulated and implemented as described above, the EU's fisheries policy could become a global model. These criteria should be developed and applied gradually affording fishers the opportunity to adapt.

A transition period will be needed in order to implement any agreed criteria. Relevant financial instruments should aim at facilitating the transition towards environmentally and socially sustainable fisheries by supporting the elimination of fishing power which does not comply with the criteria and is in excess of the amount allowed (as per step 2).

### ***Transparency and Participation***

In order to improve the understanding of those responsible for taking fisheries management decisions and to ensure public accountability, transparency of the decision-making process and stakeholder participation are essential. Meaningful participation is only possible with accessible, timely and accurate information for all stakeholders. Consequently, OCEAN2012 recommends that, amongst others:

- Information on all landings by all vessels be publicly available (as it is in the USA and Norway);
- Aggregated Vessel Monitoring System (VMS) data be available to scientists (as it is in the USA and Norway);
- Data on catches and activities of long distance fishing fleets be available to Third Countries where they are active; and
- Impact assessments and evaluations of Fisheries Partnership Agreements (FPAs) be publicly available.

### **External Issues**

In Community waters fishing should, in theory, be effectively managed as the EU and Member States have full legal competence. In Third Country waters and on the high seas, fishing can only be restricted by the negotiation of bilateral and multilateral agreements. In many cases, an unsustainable level of fishing is pursued, often caused by a combination of authorities in coastal states allocating excessive fishing rights in order to get a higher financial return and illegal, unreported and unregulated fishing. When EU vessels are re-flagged outside the EU waters, the only way to restrict their activities is through legislation covering fisheries-related activities by EU nationals and investments by EU nationals and companies (e.g. processing).

The EU should seek agreement with developing countries in order to establish a framework for governance and a dialogue on how sustainable fisheries management can be promoted in third country waters, on the basis of its priorities for the sector. This framework should also provide for the funding needed in order to achieve the joint objectives. However, the funds allocated through such a framework should be de-coupled from any fishing possibilities allocated to vessels of EU origin. EU vessel owners operating through such frameworks should pay the full costs of their access to third country waters. Such a framework must provide priority access to artisanal fishing fleets, as stated in the FAO code of conduct for responsible fisheries (Art 6.18).

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***OCEAN2012 is an alliance of organisations dedicated to transforming European Fisheries Policy to stop overfishing, end destructive fishing practices and deliver fair and equitable use of healthy fish stocks.***

***OCEAN2012 was initiated, and is coordinated, by the Pew Environment Group, the conservation arm of The Pew Charitable Trusts, a non-governmental organization working to end overfishing in the world's oceans.***

***The founding members of OCEAN2012 are the Coalition for Fair Fisheries Arrangements (CFFA), the Fisheries Secretariat (FISH), nef (new economics foundation), the Pew Environment Group and Seas At Risk (SAR).***